

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: CITY OF DETROIT,
Debtor

Chapter 9 Case No.: 13-bk-53846
Judge Thomas J. Tucker

Miller Canfield Paddock & Stone, PLC
By: Marc N. Swanson (P71149)
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By: John D. Mulvihill (P35637)
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Agar Lawn Sprinkler Systems, Inc.
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REPLY OF AGAR LAWN SPRINKLER SYSTEMS, INC.
TO CITY OF DETROIT'S OBJECTION TO PROOF OF CLAIM

NOW COMES the above named Defendant, AGAR LAWN SPRINKLER SYSTEMS, INC, "(Agar)" by and through its above attorneys and hereby submits its REPLY TO CITY OF DETROIT'S OBJECTION TO PROOF OF CLAIM and states as follows:

1. Denied. All work was approved and billed accordingly and the City received invoices. Attached hereto is the Affidavit of Robert Agar attesting to a). That all work was approved and billed and b). the City received invoices in support. Agar admits that there was a dispute as to a couple of invoices only. That Agar is researching its files

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and will produce any invoices requested by the City in support of its Proof of Claim at the time of hearing, set for August 30, 2017.

2. Admitted.
3. Denied, Agar filed timely objections and a response to the City's objection to its Proof of Claim Doc. No. 11451.
4. Admitted.
5. Admitted.
6. Agar disputes and denies that it overcharged or did not perform services.
7. Agar only admits that of the numerous invoices submitted, only a few were disputed.
8. Denied.
9. Denied. All supporting invoices were provided for work completed. See Agar Affidavit.
10. Denied.
11. Denied.
12. Denied, the facts stated are disputed.
13. Neither admitted or denied.
14. Denied as to accuracy of the events that transpired.
15. Denied.
16. Denied, the facts stated are disputed.
17. Denied, the facts stated are disputed.
18. Denied, the facts stated are disputed.
19. Denied, the facts stated are disputed.
20. Denied, the facts stated are disputed.
21. Admitted because of its bankruptcy and effort to avoid payment of amounts owed for work completed in good faith.

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22. Denied.

WHEREFORE, Agar requests that the City's Objection To Agar's Proof of Claim not be sustained, but denied.

Respectfully Submitted By:

/s/ John D. Mulvihill

By: John D. Mulvihill, (P35637)

Counsel for Agar

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August 28, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that on August 28, 2017 I electronically filed the above pleading with the Clerk of the Court by using the ECF system, which will automatically send notice of such filing to Counsel of Record.

I DECLARE THAT THE FOREGOING STATEMENT IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

/s/ John D. Mulvihill (P35637)

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-3-

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AFFIDAVIT OF ROBERT AGAR

I, ROBERT AGAR BEING FIRST DULY SWORN, STATES AS FOLLOWS:

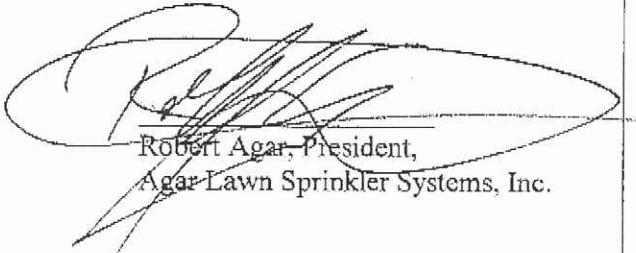
1. I was the principal of Agar Lawn Sprinkler Systems, Inc. ("Agar") at the time Agar's Proof of Claim was filed in the above matter.
2. This Affidavit is in response to the City of Detroit's Objection to Agar's Proof of Claim and the Affidavit of Angela Hipps, Manager of the City of Detroit's General Services Departments.
3. Agar is no longer operating and its records for the period in question are in storage.

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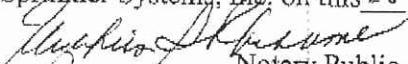
4. Agar submitted invoices for payment for work completed and approved by the City of Detroit.
5. Of the numerous invoices that were submitted, there were only three or four that were disputed by the City, and my recollection is that one or more were resolved between the parties.
6. The factual statements made by Ms. Hipps in her Affidavit are disputed. I have attached to this Affidavit a rebuttal prepared by my former office manager, Karen Agar. She reviewed and retrieved Agar invoices and other records to dispute the allegations made by her which, upon information and belief, is accurate.
7. Agar is retrieving its project records and invoices that were provided to the City of Detroit in support of its Proof of Claim and will endeavor to again produce same at the time of hearing.



Robert Agar, President,
Agar Lawn Sprinkler Systems, Inc.

STATE OF MICHIGAN
COUNTY OF OAKLAND

Before me personally appeared Robert Agar, in his capacity as President of Agar Lawn and Sprinkler Systems, Inc., on this 28 day of August, 2017.


Elizabeth S. Rheaume
Notary Public, Oakland County, MI
My Commission expires on 02-20-2018

Elizabeth S. Rheaume, Notary Public
State of Michigan, County of Oakland
My Commission Expires 2/20/2018
Acting in the County of Oakland

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Angie Hipps Declaration: AGAR REBUTTAL

12. This invoice claimed 3 men x 6 hours, not 4 men as stated.

Johnnie Haynes had called Mr. Agar for an Emergency at the River Rouge comfort center for a water turn-on, because they had lost their water wrench. This station is not on the "City" location servicing list and has never been here before. Mr. Haynes was desperate.

Mr. Agar pulled a 3 man crew off another site, and had them travel to River Rouge, locate the station, then locate the stop-box, access and application of several water wrenches before the water could be turned-on, proved timely. Mr. Haynes was not present at the River Rouge Station to show Agar anything.

This special emergency service call, was a six hour day, including travel. This service was invoiced under #267 which Mr. Haynes refused to pay, as he expected this as a favor. (stated by himself in August 13, 2012 meeting); (stated by Angie Hipps on phone call 6/20/13)

After several discussions Mr. Agar, reduced the amount by 50% and re-submitted it under invoice #247 and it was paid.

(See: #247, #267 attached)

13. Work was not "assigned" to Agar, but rather *solicited* after a "Stop Work" order put in place by GSD, Angie Hipps requested estimates to repair Grand Circus Park EAST specifically.

14. (June 20, 2013) The repair in question arose from Brickman Landscape on June 20th, 2013 whom called Agar with a report of leaking on Madison Island. Agar in turn reported this to Angie Hipps – who took it upon herself to find the problem. She could not.

With two phone calls to Karen Agar totaling 40 minutes. Agar asked for a letter to support Angela's authority should repairs present themselves in this fashion, since the Stop Work Order is set in place. And, we were working under an approved estimate for Grand Circus Park EAST.

(See notes on phone calls)

Later that afternoon Angie Hipp's contacted Agar stating she had found a leaking pop-up spray head, and wanted immediate assistance. A technician was dispatched to check the island, problem, and turn-off the water. While the technician was there, Angie Hipps photographed him.

A repair was scheduled for the following morning, June 21, 2013

(See emails)

NOTE: Regarding Angela Hipps "Experience". Agar Lawn Sprinkler Systems, Inc. has known Angela Hipps for decades. Her proclaimed experience comes courtesy of Agar itself. Her position at Rogell Golf Course, afforded her daily time to hang out with the Agar man crew in her golf cart. Her knowledge is only surface repair (such as replacing/adjusting sprinkler heads, and the identity of an electric valve not what is inclusive of replacing it in it's entirety.

After Ms. Hipps position at Rogell vanished, she was placed at the "City's" Recreation Department. Upon arriving there she persisted to take over Agar's P.O. because she knew more than entire company and crew.

Angie Hipps "Experience" lacks in all Electrical instances and Plumbing instances first and foremost. Trenching, hand digging, and pulling pipe underground are physical work that she hadn't displayed. Troubleshooting an existing system would be difficult, as her answer (17) and time estimate (15) are way off.

15. Our technicians arrived to repair the Madison Island June 21, 2013. Ms. Hipps "broken sprinkler head" was not the problem. Experience would have told her, it was a pressure problem. Upon inspection the day before, the problem was an Electric Zone Valve and a 24-Volt Solenoid. This requires locating, digging, and wiring; Re-checking the system and burying.

During both service calls Angie Hipp's, interfered with technicians and the repair site itself, talked excessively and held up the repair purposely, making the repair last longer than need be.

Between the service on June 20 and June 21, the service rate stands. (See invoice #412) Ultimately, for a means to an end, Agar discounted this invoice 50% for the betterment of Detroit. It was never paid.

16. There was an error on the invoice sent. It was corrected and resent. Ultimately, for a means to an end, Agar discounted this invoice 50% for the betterment of Detroit. It was never paid.

17. On June 21, 2013 Angie Hipps requested to have an on-site meeting at Grand Circus Park-WEST to obtain a repair estimate, while Agar was repairing Grand Circus Park-EAST; which had previously estimated, approved, and begun.

(Since the estimate was approved for the entire job and materials, hours are not counted. It is an all inclusive repair.)

See estimate; See Invoice #413 never paid.

It was determined at this June 21, 2013 on-site meeting, that Angie Hipps would secure access to water turn-on by city personal and meet with Agar on June 25, 2013 at 9:30 a.m. at Grand Circus Park – WEST.

On June 25, 2013 Agar technician showed up at approx. 9:25. He was to access the water turn-on and start checking the system. Angie Hipps contact for access never appeared at the job site. Agar technician made several calls to the Parking Authority to gain access. After two hours or more, no one from either the city or parking authority showed. Estimates are free and there was never a charge for this day. No repair was scheduled for this day.

It is the GSD manager's job to gain access to city property not a contractor. Agar tried all its resources, from their twenty years in the city, to gain access to no avail. Hipps own contact never called her back.

Agar suggested that we try again the next morning June 26, 2013. Angie Hipps got very irate, bossy, mean, insulting and was extremely angry that things did not go her way. She said "Agar is going down"! Everyone left the site.

24. Entire statement is a fabrication.

26. After the events of June 25, 2013 in particular Agar decided to decline the estimate process for the next morning. Events from Agar's initial encounter with Angie Hipps on: May 21, 2013 through June 25, seemed underhanded. Along with the GSD/DPW departments unwillingness to pay for requested, approved work we bowed out. (See emails)